



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RU AF \$ DAE

In re the application of:

Marks et. al.

Examiner: Lisa Hashem

Serial No. 09/838,330

Filed April 20, 2001

Art Unit: 2645

For: Method for Assembly of  
Unique Music Playlists

RESPONSE TO DISMISSAL OF PETITION

U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

This paper responds to the Dismissal of Petition dated March 22, 2005 in the above referenced application.

From that Dismissal (a copy of which is enclosed for reference) and the undersigned's telephone conversation this morning with the Petitions Examiner who issued the Dismissal, it seems that much of the documentation, including the Response, originally filed with the Petition was misplaced. In response thereto, and in accordance with the aforementioned telephone conversation, enclosed herewith is a copy of the entire documentation originally filed on January 27, 2005.

In particular, enclosed also is a photocopy of the self addressed Return Receipt Postcard, stamped by Patent and Trademark Office, evidencing receipt of that documentation. Also enclosed is a photocopy of the FedEx invoice showing delivery of the package on January 27, 2005.

~~Although our bank has confirmed that the original check for \$750.00 was deposited and has cleared, for caution's sake a replacement check in that amount is also enclosed.~~

Please associate the enclosed with the file in this application. If there are any questions, please contact me as soon as possible at 818-407-1503 (Pacific Time).

Thank you.

  
Brad I Golstein  
May 4, 2005



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

BRAD I. GOLSTEIN  
METRO88  
20755 PLUMMER STREET  
CHATSWORTH, CA 91311

**COPY MAILED**

**MAR 22 2005**

**OFFICE OF PETITIONS**

In re Application of  
Michael B. Marks, et al.  
Application No. 09/838,330  
Filed: April 20, 2001  
Attorney Docket No. BOX-2

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed January 27, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)<sup>1</sup> must be accompanied by: (1) the required reply,<sup>2</sup> unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item 1.

<sup>1</sup> As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

<sup>2</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

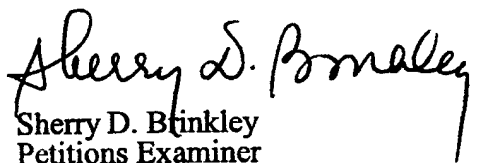
Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITION  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                      U.S. Patent and Trademark Office  
                                    Customer Service Window, Mail Stop PETITION  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

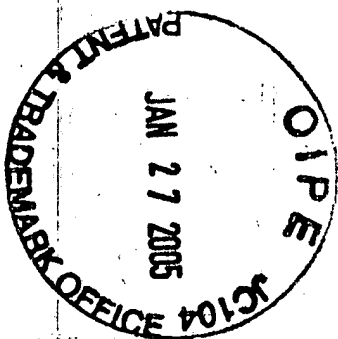
The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

BEST AVAILABLE COPY

Received this day Petition for Revival of an Application  
for Patent Abandoned Unintentionally under 35 CFR 1.137(b),  
Fee Payment, Response to Office Action, all in re 09/836,330



Box 2



Invoice Date: Feb 11, 2006  
Account Number: 1392-9274-0  
Page: 5 of 5

## FedEx Express Shipment Detail By Payor Type (Original)

Dropped off: Jan 26, 2005

Payor: Shipper

Reference: NO REFERENCE INFORMATION

- Fuel Surcharge - FedEx has applied a fuel surcharge of 9.00% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 205.55
- Distance Based Pricing, Zone 8
- Package sent from: 91303 zip code
- 1st attempt Jan 27, 2005 at 06:40 AM.

Tracking ID 846782831038  
Service Type FedEx Standard Overnight  
Package Type FedEx Pak  
Zone 8  
Packages 1  
Weight 1.0 lbs, 0.5 kgs  
Delivered Jan 27, 2005 10:45  
Svc Area A1  
Signed by S.ZEWODIE  
FedEx Use 026178790/0000014/

Sender  
BRAD I GOLSTEIN  
WORKTOOLS INC  
20755 PLUMMER ST  
CHATSWORTH CA 91311-5003 US

Recipient  
US PATENT & TRADEAWK OFFICE  
CUSTOMER WINDOW MAIL STOP PETI  
2011 SOUTH CLARK PL CRYSTAL PL  
ARLINGTON VA 22202 US

Transportation Charge  
Fuel Surcharge 27.1  
Earned Discount 2.0  
Total Charge -2.0

USD \$ 27.1

Shipment Detail Subtotal ..... USD \$ 52.3

Dropped off: Jan 19, 2005

Payor: Recipient

Reference: Box-2 MotherLOAD

- Fuel Surcharge - FedEx has applied a fuel surcharge of 9.00% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 205.55
- Distance Based Pricing, Zone 8

INET  
Tracking ID 790892160410  
Service Type FedEx Standard Overnight  
Package Type FedEx Box  
Zone 8  
Packages 1  
Weight 2.0 lbs, 0.9 kgs  
Delivered Jan 20, 2005 15:00  
Svc Area A2  
Signed by J.MOL  
FedEx Use 005472999/0001415/

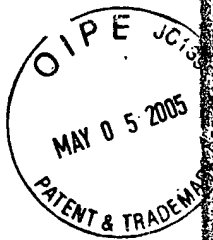
Sender  
Mike Marks  
INVENTION CITY, INC  
399 South Orleans Rd.  
ORLEANS MA 02653 US

Recipient  
Brad Golstein  
WorkTools, Inc.  
20755 Plummer Street  
CHATSWORTH CA 91311 US

Transportation Charge  
Fuel Surcharge 30.25  
Automation Bonus Discount 2.37  
Earned Discount -1.51  
Total Charge -2.42

USD \$ 28.89

Shipment Detail Subtotal ..... USD \$ 28.89



BRAD I GOLSTEIN  
JOEL MARKS  
20755 PLUMMER STREET  
CHATS WORTH, CA 91311

111

DATE

10-7755/3220

PAY TO THE  
ORDER OF

Commissioner for Patents & Trademarks

\$ 750.00

Seven Hundred Fifty Dollars

DOLLARS



**CR COURTS & RECORDS**

FEDERAL CREDIT UNION  
718 WEST FIRST STREET  
LOS ANGELES, CA 90012-2450

MEMO

Re: 09/836,330

*And J. Golstein*

⑆32207755⑆

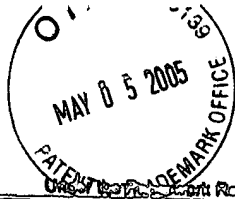
0005035649⑆

011

Received this day Petition for Renewal of an Application  
for Patent Abandoned Unintentionally under 37 CFR 1.137(b),  
Fee Payment, Response to Office Action, all in re 09/836,330

13.22

BEST AVAILABLE COPY



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

**Docket Number (Optional)**  
Box 2

First named inventor: Marks

Application No.: 09/839,330

Art Unit: 2845

Filed: April 20, 2001

Examiner: Lisa Hashem

Title: Method for Assembly of Unique Music Playdata

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (703) 872-8308

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

- ☒ Small entity fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of Response to Office Action (Identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 38 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1480, Alexandria, VA 22313-1480. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/83).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Michael Marks  
Signature

Jan. 26, 2005  
Date

Michael Marks  
Typed or printed name

Registration Number, if applicable

2 Lovell Lane  
Address

508-255-5227  
Telephone Number

Orleans MA 02653  
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.6(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name of person signing certificate



Under the Paperwork Reduction Project (1571-004), no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**3. Terminal disclaimer with disclaimer fee**☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).**4. STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

  
Signature

January 26, 2005

Date

Joel Marts

Typed or printed name

Registration Number, if applicable

McGress, 20765 Plummer Street

Address

618-407-1903

Telephone Number

Chatsworth, CA 91311

Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☐ Other: \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9303.

Date

Signature

Typed or printed name of person signing certificate